

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1090 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ISHWARBHAI BHAILALBHAI PATEL

Appearance:

Mr. M.A. Mukhari, A.P.P. for appellant.

MR NITIN M AMIN for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 07/10/97

ORAL JUDGEMENT

The learned Judicial Magistrate, First Class, Dahegam, acquitted thee accused of Criminal Case No. 104/84 by judgment dated 25.5.1984 where the respondent/accused was facing charge under Section 377 of IPC.

I have been carried through the judgment and relevant evidence also. The order of acquittal recorded by the

learned Magistrate cannot be said to be an erroneous view. On the basis of the material on record, the view taken by the learned Magistrate resulting into acquittal cannot be said to be erroneous or in any way unjustified. The view being thus probable it will not be proper for this Court to interfere with the same.

The defence, as recorded in paragraph 12 of the judgment, page 100 of the paper book, is to the effect that the respondent aged about 70 years at the time of the incident was in fact treating the family of the alleged victim, Pravin. The family owed Rs.250/- to him which they were not paying. When the accused started pressing for the amount he has been falsely implicated in this case.

Apart from the age factor of the accused, medical evidence also does not support the case of the prosecution when the case of the prosecution was of completed act of sodomy. Under these circumstances the order of acquittal is not required to be interfered with. As rightly noted by the learned Judicial Magistrate, First Class, there is contradiction in the oral testimony of the complainant which is full of exaggeration as compared with his earlier version in the form of complaint, Ex.19. The appeal is, therefore, dismissed. The order of the trial court is confirmed.